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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Comment Requested on a La Carte and Themed)
Tier Programming and Pricing Options for) MB Docket No. 04-207
Programming Distribution on Cable Television)
And Direct Broadcast Satellite Systems)

A properly designed a la carte system has the potential to empower both African American consumers and African American Programmers. The current system of begging an inherently conflicted cable or satellite system, in order to win favorable access to consumers continues to drive African American programmers closer and closer to extinction. Instead of going out of business, African American programmers will take their chances with a la carte, where they have a fighting chance.

These programmers are talented and proud. These business people will enthusiastically embrace an a la carte system that grants them the ability to sell their programming in an open media marketplace. Their common response to the question, “is your programming compelling enough for people to choose and pay for a la carte?” is an emphatic “YES”. Of course, African American programmers would love to be part of the Old Boy’s Cable system where you get \$20 or \$30 million dollars worth of subscriber fees every month for whether people want their programming or not. But, none of them are part of that system.

Obviously, Big Media fears African Americans being empowered to choose the programming they see. I can empathize with the position of Big Media. Why be held

accountable to your customers if you don't have to be and a disproportionate amount of your customers are African Americans who are not likely to continue subsidizing programming they do not want?

A poll conducted from April 16 to April 19, 2004, asked the following question:

“Most cable companies do not allow their customers to customize their basic cable TV package by subscribing only to the channels they would like to watch. Instead, cable customers must subscribe to a pre-arranged basic package of programming. As a cable customer, would you prefer to choose for yourself the programming to be included in your basic cable subscription or is the cable company's prearranged basic package satisfactory?”

65% of African Americans responded that they prefer to choose for themselves.¹

It is extremely ironic that Big Media is promoting a disingenuous anti-choice campaign on the backs of the minority programming community that it has long disrespected. Fortunately, the industry's own research and statements discredit many of the unfounded allegations the industry is making about a la carte programming.

I applaud the Federal Communication Commission's efforts to shed light on problems with the current system. I also urge the FCC to continue to ask the tough questions that need to be asked. A properly constructed a la carte system has the potential to provide African American programmers access to a marketplace from which they have long been denied. I look forward to working with you to develop a media system more accountable to both African American consumers and African American programmers.

African American Programming will thrive in the right a la carte system

African American consumers represent 20% of cable and satellite viewers despite being only 13% of the population. African Americans are disproportionate consumers of both premium and pay per view services. It has been reported that African Americans make up nearly 1 out of 3 HBO subscribers, contributing over \$100 million per month in subscriber fees to HBO, which is owned by Time Warner. If African Americans can choose HBO and make HBO highly profitable, why should they be prevented from choosing an African American network.

In the September 15, 2003 issue of *Broadcasting and Cable*, BET Founder Bob Johnson is quoted as saying: “There should be a black pay cable channel right alongside HBO and Showtime. It would stimulate the production of black feature films; films could be

¹From the cross-tabs of a poll conducted on behalf of the Concerned Women of America April 16 to April 19, 2004.

placed theatrically, then put on the pay service and then sold into syndication and later on cable.”²

Access Denied

The following is a list of some African American programmers who have been denied access to distribution in the current system. This list is not meant to serve as an a la carte positioning on the part of these networks. They can speak for themselves. This list, however, is meant to express the many different resources and experiences available to the FCC as it continues to address these important issues.

Black Education Network

Steven Davis, Chairman
Harlem, New York and Marietta, GA
Phone: 917-903-5509

The Black Education Network (“BEN”) tried for years to gain access to distribution from cable systems. BEN even took the unusual step of attempting to buy cable systems in order to be in a position to barter to get their programming on other systems. BEN attempted to buy cable systems spun off during the Comcast and AT&T merger. Despite outbidding other bidders by \$100 million, BEN was not granted the cable systems. BEN has filed a discrimination and breach of contract suit against Comcast.

In June, BEN announced plans to begin broadcasting 2 hours of programming per week on Pax TV. BEN continues to pursue access to distribution. BEN has filed comments in support of digital multicast must carry as a means to access distribution.

Christian Television Network

Rev. Glenn Plummer
15565 Northland Dr., Suite 900W
Southfield, MI 48075
Phone: 248-559-4200
Website: www.ctnusa.org

CTN needed hundreds of African American Pastors to organize their congregations to pressure Comcast to have CTN distributed on the Detroit Comcast system. CTN is also on systems in New Orleans and Baton Rouge. However, the network has been unable to get beyond its current 3 million subscribers because they were not granted access to wider distribution.

² “Allison Romano, Johnson Raps Cable Industry for ‘Lip Service’ to Blacks, Broadcasting & Cable, September 15, 2003.

The Employment and Career Channel

Broderick Byers, Chief Executive Officer
253 W. 51st St., 3rd Floor
New York, NY 10019
Phone: 212-445-0754
Website: www.employ.com

The Employment and Career Channel has been unsuccessful at its attempts to gain wide carriage of its career based programming despite the obvious opportunities the economic downturn should have presented for this African American owned network.

New Urban Entertainment Television (NUE-TV)

Silver Spring, Maryland (Filed for Bankruptcy in 2002)
Robert Townsend, Former Chief Operating Officer
Phone: 703-476-4427

This is an unfortunate example of what is wrong with the cable industry. In 2000, Producer Quincy Jones joined a team of highly experienced African American cable executives to found a cable network. The network eventually had to file for bankruptcy, because it was not able to access any significant distribution.

Urban Broadcasting Company

Peggy Dodson, Chairman and Chief Executive Officer
Harlem, New York
Phone: 212-283-7477
Website: www.e-ubc.com

Peggy Dodson founded the Urban Broadcasting Company (“UBC”) based on a business model poised to exploit digital convergence. UBC plans to provide web based broadcasting technologies, merchandising, sports, entertainment and public policy programming. In 2003, UBC signed an exclusive rights deal to broadcast Florida A&M University games. UBC was forced to have this programming distributed by other networks during last year’s football season. Ms. Dodd was part of a January 2002 Black Enterprise cover story on African American women in the digital economy. Unfortunately, UBC has not had much luck winning access to distribution despite its successful programming.

A la carte already exists

The concept of a la carte and tiered programming are not new. It is extremely disappointing to see opponents of a la carte and tiered programming warn against the

doom of an a la carte or tiered programming system when Big Media already offers a wealth of services in a la carte or tiered. The only new issue is whether cable companies or consumers will control what is offered a la carte or in tiered programming.

Ironically, a recent article in the cable industry press reveals how the cable industry is using a la carte tiers of ethnic programming to attract ethnic subscribers to their cable systems.³ Of course, these ethnic subscribers are forced to buy hundreds of channels they may not want before they can buy the ethnic programming they desire. Comcast claims that its Latino programming tier has enabled the company to double its Hispanic customers over the last 14 months. Time Warner cable has offered a Latino tier since January 2003. Adelphia sells a 12-channel Spanish tier for \$5.95 per month and a package offering six different networks for \$4 per month. For \$10 to \$20 per month, some cable customers can access Asian programming. This programming has been so successful that cable and satellite companies have used these offerings to compete for new customers.

Minority programming arguments against a la carte are based on resistance to submit to a business model in which consumers elect to receive and purchase content. However, the aforementioned examples provide solid real market examples of how ethnic programming thrives under models in which consumers must elect to receive programming.

Discriminatory distribution is the real threat to African American programmers

No African American programmer has successfully launched a cable network in over 20 years! Black Entertainment Network (BET) Founder Bob Johnson launched BET over 20 years ago with the backing of Liberty Media, then the largest cable company in the country, and significant political and community pressure. Unfortunately, Congress eliminated one of BET's most effective tools in applying political pressure to obtain distribution by enacting the Cable Act of 1992 that eliminated the authority of local governments to address carriage issues in franchise renewal agreements.

The cable situation for African American programmers reminds one of the civil rights era when broadcasters refused to allow African Americans access to programming of their choice.

Congressman Robert C. "Bobby" Scott hosted a Congressional Black Caucus event on minority media ownership during the 2003 Congressional Black Caucus Annual Legislative Weekend. The participants included representatives from the following African American owned networks: New Urban Entertainment, Urban Broadcasting

³ Simon Applebaum, Mano a Mano! Cable Takes the Ethnic Fight to the Skies, July 5-18, 2004.

Network, CoLours Television, Employment Channel, Russell Simmons' Fabulous Television Network, and Black Education Network. The eerie similarities of the panelists' stories continue to haunt me. They all tried for years to win carriage on cable and satellite systems and were given the run around. They were told that no one would want to watch their programs, despite the industry statistics that are in stark contrast to this baseless assertion. They were told that there was not enough room on the cable systems, only to see networks owned by Big Media launched. They all played the cat and mouse game of being denied financing because they did not have distribution and being denied distribution because they did not have financing.

The inability for African American programmers to set their own subscriber fees is also an issue. According to BET Founder Bob Johnson, "BET probably has the lowest subscriber fee of any channel that has been around 20 years. Why, when BET is as old as MTV, ESPN, CNN, and USA Network? I think it is failure on the part of the cable industry to reciprocate to black subs that spend more dollars per capita on cable than white subscribers. We get 15-16 a sub. We should be getting 45-50 per sub. It would have been a 2-per-year increase over 20 years. If "Diversity Week" means anything, it should be to bring to the attention of the industry that there is a deficit between black subscribers and money going in to produce compelling programming of interest to African-American viewers and delivering cable channels targeted to African-Americans. I think the issue of original programming is clearly tied to distribution and sub revenue."⁴

If BET, which is universally accepted as the best positioned African American network, can not produce amply compelling programming due to its inability to get cable companies to pay it a fair price, every other venture or attempted adventure is fighting a losing battle. The right a la carte system would address these issues by giving more price control to programmers. BET and other African American programmers should be free to set their own rates.

Advertising models are changing

Opponents of a la carte assert that without mass audiences, African American programmers will be unable to attract advertisers. How ironic. The cover story of a recent issue of *Business Week* was about the fragmentation of markets and the advertising industry's more sophisticated focus on niche markets.⁵ The article cited African American media companies among the beneficiaries of this market fragmentation. This is yet another reason why African American programmers are well positioned to benefit from niche audiences in an a la carte system.

⁴ Allison Romano, Johnson Raps Cable Industry for 'Lip Service' to Blacks, *Broadcasting & Cable*, September 15, 2004.

⁵ Anthony Bianco, The Vanishing Mass Market: New technology. Product proliferation. Fragmented media. Get ready: It's a whole new world, *BusinessWeek*, July 12, 2004.

It is also important to note that mass advertising revenues are generally not available to cable networks until they pass the 25 to 30 million subscriber mark. Only Viacom owned BET has met this threshold. And even after exceeding this threshold, BET Founder Bob Johnson continues to complain of discriminatory treatment by advertisers. Therefore, the argument that in an a la carte system, African American programmers will miss out on mass advertising markets is completely without merit. This market does not exist for African American programmers who are denied mass distribution. Trends reflect that African American programmers would have a stronger case to make with niche market programming in an a la carte system.

Conclusion

Technology and programming diversity require that the FCC address issues of consumer choice and vertical integration. African American consumers can ill afford to continue suffering at the hands of a monopoly system that denies them access to their content of choice. African American programmers have compelling content, but are denied the opportunity to distribute this content to customers that want it. A la carte is one tool that, if applied responsibly, could solve some of the disparities in African American programming and media consumption. I also encourage the FCC to consider how aggressive application of anti-trust law, prohibitions against vertical integration, and digital multicasting must carry could also address some of these problems.

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